

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER
ADMINISTRATIVE REVIEW AND ACTION BY THE
CHIEF ADMINISTRATIVE HEARING OFFICER

United States of America, Complainant vs. G.L.C. Restaurant, Inc.,
d/b/a Capriccio Restaurant, Respondent; 8 U.S.C. 1324a Proceeding; Case
No. 89100063.

ACTION BY THE CHIEF ADMINISTRATIVE HEARING OFFICER AFFIRMING THE
ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER

On February 2, 1989, the United States of America, by and through
its agency, the Immigration and Naturalization Service, (hereinafter
complainant) filed a Complaint against G.L.C. Restaurant, Inc.,
(hereinafter respondent).

The Complaint alleged unlawful employment and paperwork violations
by respondent under Sections 274A(a)(1)(A) and (a)(2)(A) of the
Immigration and Nationality Act, codified at 8 U.S.C. §§ 1324a(a)(1)(A)
and (a)(2)(A), and requested civil money penalties totalling \$1,500.00.

On February 9, 1989, the Honorable Nancy M. Sherman, Administrative
Law Judge, was assigned to this case by the Chief Administrative Hearing
Officer (hereinafter CAHO). On January 23, 1990, complainant filed a
motion to dismiss the Complaint and cancel the hearing date. By order
dated March 15, 1990, the Administrative Law Judge dismissed the
Complaint with prejudice and cancelled the hearing date.

On May 14, 1990, the respondent filed an application for attorney's
fees and other expenses, entitled, ``Request for Attorney Fees Under The
Equal Access to Justice Act'', in the amount of \$9,124.90. On June 19,
1990, the complainant filed a motion to deny respondent's Equal Access
to Justice Act claim (hereinafter EAJA), 5 U.S.C. § 504. On July 18,
1990, respondent filed a reply to the complainant's motion to deny,
seeking to increase the amount for attorney's fees from \$9,124.90 to
\$12,087.00 (reflecting an increase

in the attorney's hourly rate from \$75.00 to \$100.00). On August 3, 1990, the complainant filed a ``Motion to Strike Respondent's Request to Amend Application for Attorney's Fees''. On August 10, 1990, the Administrative Law Judge issued an order to show cause why respondent's request for attorney's fees should not be dismissed. The respondent filed a response on September 8, 1990, which again increased the amount of fees and expenses to \$14,120.00, based upon additional activities regarding the reply to the order to show cause.

On November 20, 1990, the Administrative Law Judge issued a Decision and Order which dismissed, for lack of jurisdiction, the respondent's application for attorney's fees under EAJA.

On December 3, 1990, the respondent filed with the CAHO, a timely request for administrative review of the denial of the EAJA application, pursuant to 28 C.F.R. § 68.51(a). The complainant responded by filing a reply, received by this office on December 12, 1990.

ACCORDINGLY,

The Chief Administrative Hearing Officer has conducted a review of the Administrative Law Judge's Decision and Order of November 20, 1990. The documents identified herein and the record as a whole have been carefully considered. Pursuant to 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.51, the Chief Administrative Hearing Officer hereby affirms the Administrative Law Judge's Decision and Order.

Affirmed this 18th day of December, 1990.

JACK E. PERKINS
Chief Administrative Hearing Officer